

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

JUNE 25, 2002

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, June 25, 2002 at 9:00 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 9:00 a.m. by Chairman ARTHUR SLATTERY.

Present: Commissioners ARTHUR SLATTERY, MARTIN SMITH, BARBARA HEATH, PAULINE IKAWA, Executive Director BETH EMMONS, Investigator ANN FLANAGAN, Administrative Assistant MARILYN PRIEST and Executive Secretary CYNTHIA PATTEN.

- I. Motion by Commissioner IKAWA, seconded by Commissioner SMITH, to approve and accept the minutes of the Commission meeting held on May 29, 2002.

II. APPOINTMENTS

9:00 a.m. - Equivalency Interviews

<u>CANDIDATE</u>	<u>COMMISSIONER</u>	<u>DETERMINATION</u>
KARA LARSON	SMITH	APPROVED

10:45 a.m. – KENNETH AZORIAN appeared before the Commission requesting a waiver from RSA 331-A:18 – License lapsed over 6 month period from expiration date. Mr. Azorian explained to the Commission that he placed his license in inactive status in 1999, and that time he was informed by one of the Commission staff that he was only required to renew his license every four years. He also stated that he did not receive a renewal form from the Commission prior to his renewal period, because the Commission had an incorrect mailing address on record. Mr. Azorian stated that he informed the Commission of his address change in 1999, along with a \$15 amendment fee. The Commission has no record of the request for a change of address or evidence of receipt of the \$15.00 fee. After a discussion and review, the Commission decided that they would approve Mr. Azorian's request once Mr. Azorian submits to the Commission, a copy of the cancelled check for the \$15.00 amendment fee, or his tax records showing the \$15 check.

11:00 a.m. – LANE RAICHE appeared before the Commission regarding his original broker's application, which was tabled for further documentation at a Commission meeting held on October 16, 1990. After an explanation, discussion and review, the Commission decided that Mr. Raiche would be allowed to get his broker's license once Mr. Raiche submitted proof to the Commission that he has no outstanding IRS liens. Mr. Raiche was directed to provide the Commission with a letter from an attorney, certifying that he has no outstanding IRS liens against him and to submit proof of his license application and a copy of the cancelled check for the broker application fee.

III. **DISCUSSION**

STEVEN EASTMAN – submitted a request for a waiver from RSA 331-A:5-a – Lapse of License in April 1992. After discussion and review, and based on RSA 331-A:5-a, which was in effect in 1992, the Commission members upheld the decision of the Commission at its April 21, 1992 meeting, since he allowed his license to lapse without good cause. Mr. Eastman also requested that the Commission provide him with a legal opinion as to whether the Commission believes it is legal for a city, town or the state to use its resources to limit the ability of a real estate broker to earn a living. The Commission felt it was not its position to provide legal opinions and did not provide an opinion to Mr. Eastman's question.

IV. **OTHER BUSINESS**

1. Tuesday, July 23, 2002, was unanimously approved as the date for the next regular meeting.
2. CASE EVALUATIONS - NONE
3. ORDERS

The following Orders were issued by the New Hampshire Real Estate Commission. Copies of the Orders are attached and become part of the official minutes of this meeting.

FILE NO. 2001-05-06 NEW HAMPSHIRE REAL ESTATE COMMISSION & BARBARA SHEPARD VS LISA ANN JARVIS (CENTURY 21 HIGHVIEW REALTY)

FILE NO. 2001-06-03 BRADLEY STEUSLOFF VS STEPHEN WEEKS

V. **HEARING 9:45 AM**

FILE NO. 2001-02-05 RONALD & GAIL CHARETTE VS WAYNE COUTURE & LAURIE CARBONE (DBA: WAYNE COUTURE REAL ESTATE)

Evaluator: Commissioner Slattery

The following persons were present at the hearing:

Commission: Commissioners MARTIN SMITH, BARBARA HEATH, PAULINE IKAWA, Executive Director BETH EMMONS, Investigator ANN FLANAGAN, Administrative Assistant MARILYN PRIEST, and Executive Secretary CYNTHIA PATTEN.

Stenographer: Barry Nolin

Gerard J. Nolin & Associates, LLC
P.O. Box 1088
Concord, NH 03302-1088

Evaluator: Commissioner Slattery evaluated the above matter and abstained from participation in the discussion and resulting decisions.

Complainants: Ronald & Gail Charette

7 Main Street
Plaistow, NH 03865
Cornish, NH 03745

Attorney: Pro Se

Respondents: Wayne Couture

Wayne Couture Real Estate
3 Main Street
Plaistow, NH 03865

&
Laurie Carbone

208 Haverhill Road
East Kingston, NH 03827

Attorney: Pro Se

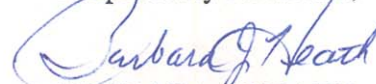
Witness: Donald Reis

DECISION: Pending - subject to review of transcripts and exhibits.

VI. **ADJOURNMENT**

Motion by Commissioner SMITH, seconded by Commissioner HEATH to adjourn the meeting. Chairman SLATTERY adjourned the meeting at 11:30 a.m.

Respectfully submitted,


BARBARA J. HEATH
Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION

ORDER

FILE NO. 2001-06-03

BRADLEY SLEUSLOFF

VS

STEPHEN WEEKS

This matter comes before the Real Estate Commission on the complaint of Bradley Sleusloff, who alleges violations of NH RSA 331-A:13, IV and VI by Stephen Weeks. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Stephen Weeks (hereinafter referred to as respondent) was licensed as a real estate broker on 11 December 1970, and was so licensed and the principal broker of Coldwell Banker Steve Weeks Realtors at the time of the alleged violations.
2. Bradley Sleusloff (hereinafter referred to as complainant) entered into a purchase and sales agreement to purchase a property located at 85 Anthony Drive, Laconia, New Hampshire on 19 April 1999, which was listed through respondent's real estate office.
3. On May 12, 1999, complainant requested respondent return complainant's \$2,000.00 escrow deposit to complainant because complainant and seller could not come to terms regarding the home inspection contingency.
4. Respondent indicated that he refused complainant's request to return complainant's deposit, and instead turned the \$2,000.00 escrow deposit over to the seller because respondent felt that complainant was in default by not meeting the financing date of May 7, 1999, and cited the provision in the contract deeming the deposit non-refundable after the financing date. There was no "Time Is of the Essence" clause associated with the date.
5. Complainant indicated that he did not proceed with the financing aspect of the transaction because complainant and seller could not come to terms regarding the home inspection contingency, so it seemed unnecessary to proceed with financing.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

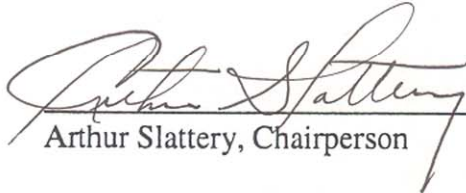
Any deposits held in a real estate broker's escrow account are regulated by real estate licensing law and code of administrative rules. A buyer and seller cannot contractually agree to have the real estate broker disobey any laws or rules regarding the handling of escrow funds. This is why the New Hampshire Real Estate Commission is not particularly interested in the provisions of a purchase and sales contract agreed to by a buyer and seller. Buyers and sellers are signatories to the P&S, and nothing they agree upon can permit a real estate broker to disobey licensing laws and rules. Otherwise, by attempting to interpret the civil, monetary, and legal provisions of a contract, the broker takes on the role of a judge, and this is exactly what the law is protecting the public from having happen.

There was no evidence that the \$2,000.00 deposit was anything other than a good faith to purchase deposit. Because there was a dispute between complainant and the seller regarding the release of the deposit, respondent should have retained the money in his escrow account until the matter was decided by a court of competent jurisdiction, most likely small claims court in this case. The law regulating real estate agent's escrow accounts is clear that a broker cannot release escrow money except at closing, with signed releases by all parties to the contract, or by a judge's order. In a case where a broker wants to determine how a deposit is released apart from performance, mutual release, or court order, the law provides a notification process for a broker to release funds. Respondent did not follow any of these four possible methods for releasing escrow funds. Therefore, the Commission rules that respondent did violate RSA 331-A:13, IV and VI.

In view of the foregoing rulings of law, the Real Estate Commission hereby orders that respondent pay a \$250.00 disciplinary fine to the State of New Hampshire General Fund within three (3) months of the date of this Order. This Order also serves as a warning to respondent that any future similar escrow violations could result in possible suspension or revocation of respondent's real estate broker's license. However, the Commission is hopeful that this incident will serve as a learning experience for respondent regarding the release of escrow funds. The Commission further recommends that complainant make a claim against respondent's real estate broker's bond for the \$2,000.00 respondent illegally released from his real estate escrow account.

Under the provisions of RSA 331-A28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.


Commissioner Heath evaluated this case and did not take part in the hearing or decision.


Arthur Slattery, Chairperson

6-25-02
DATE


Martin Smith, Commissioner

6/25/02
DATE


Pauline Ikawa, Commissioner

6/25/02
DATE

NEW HAMPSHIRE REAL ESTATE COMMISSION

ORDER

FILE NO. 2001-05-06

NEW HAMPSHIRE REAL ESTATE COMMISSION
&
BARBARA SHEPARD

VS.

LISA ANN JARVIS
(CENTURY 21 HIGHVIEW REALTY)

This matter comes before the Real Estate Commission on the complaint of Barbara Shepard and the New Hampshire Real Estate Commission through its Investigator Ann Flanagan, who allege violations of NH RSA 331-A:26, I, III, V, XI, XVI, XXVI, XXVIII, XXIX, and XXXVI by Lisa Ann Jarvis. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Lisa Ann Jarvis (hereinafter referred to as respondent) was licensed as a real estate salesperson on 20 October 1997 and as a real estate broker on 30 August 2000. Respondent is an associate broker with Century 21 Highview Realty and was so licensed at the time of the alleged violations.

2. Barbara Shepard (hereinafter referred to as complainant), with her significant other of 17 years Michael Drawing, and their two children, were looking at property through respondent.

3. They entered into a Purchase & Sales Agreement on 10 January 2001 in Michael Drawings's name only to purchase one of respondent's listings. Respondent was an agent of the seller.

4. Financing for the transaction was denied on 21 February 2001.

5. Complainant claimed that respondent spent the night with Michael Drawing on 17 February 2001, and that respondent's own husband, Anthony Jarvis split up with respondent as a result of the affair.

6. Anthony Jarvis was in jail at the time of this hearing and was unable to testify. The letter Mr. Jarvis wrote to the New Hampshire Real Estate Commission indicated that

he knew of the affair between respondent and Michael Drawing, but failed to indicate the exact dates in time.

7. Respondent acknowledged that she was having an affair with Michael Drawing and continues to have an affair with him, but that nothing was going on between them during the time of the real estate transaction.

8. Complainant indicated in her complaint to the New Hampshire Real Estate Commission that respondent had been convicted of DWI in Vermont. The Commission Investigator Ann Flanagan had respondent send a copy of her criminal record [Complainant's Exhibit #1] to the Commission, which confirmed a Misdemeanor conviction on 28 February 1997 for Operating After Suspension (including a 2 day incarceration), and DWI on 12 November 1994.

9. On respondent's Application for License as Salesperson, signed 14 October 1997, respondent answered "no" to question # 7: Have you ever been convicted of an offense other than a traffic violation?

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

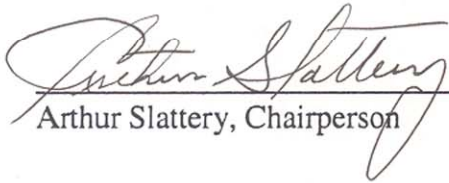
It is unprofessional for a real estate agent to have romantic contact with a customer or client during a real estate transaction. A customer or client's interests or the interests of the other parties in the transaction could be compromised as a result of such contact. Respondent acknowledged that she was having an affair with Michael Drawing and continues to have an affair with him, but that nothing was going on between them during the time of the real estate transaction. Therefore, due to a lack of evidence to the contrary, the Real Estate Commission rules that respondent did not violate NH RSA 331-A:26, XI, XXXVI, XXVIII, XXIX, or XXXVI.

Due to a lack of evidence to the contrary, the Real Estate Commission rules that respondent did not violate NH RSA 331-A:26, III, V, or XVI.

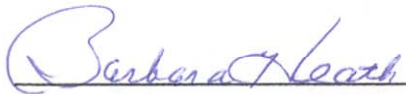
Respondent was convicted of a criminal offense and did not disclose it on her license application. Therefore, the Commission rules that respondent did violate NH RSA 331-A:26, I.

In view of the foregoing rulings of law, the Real Estate Commission has determined that respondent should have disclosed her criminal conviction on her real estate license application. Misdemeanors are criminal offenses, and disclosure is required. However, since this conviction would likely not have prevented respondent from obtaining a real estate license, the Commission has decided not to impose any disciplinary action against respondent.

Commissioner LeRoy evaluated this case and did not take part in the hearing or decision.


Arthur Slattery, Chairperson

6-25-02
DATE


Barbara Heath, Commissioner

6-25-02
DATE


Pauline Ikawa, Commissioner

6/25/02
DATE


Martin Smith, Commissioner

6/25/02
DATE